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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

JOSEPH L. MIZZONI,

Plaintiff,

vs.

STATE OF NEVADA, et al.,

Defendants.

Case No. 3:15-cv-00499-MMD-WGC

**OPPOSITION TO MOTION TO RESPOND
TO DEFENDANT'S NOTICE OF
ACCEPTANCE OF SERVICE**

Defendant, Ira Brannon, by and through counsel, Adam Paul Laxalt, Attorney General of the State of Nevada, and Erin L. Albright, Deputy Attorney General, hereby opposes Plaintiff's Motion to Respond to Defendant's Notice of Acceptance of Service. This opposition is based on the following Memorandum of Points and Authorities and all papers and pleadings on file herein.

MEMORANDUM OF POINTS AND AUTHORITIES

I. RELEVANT FACTUAL BACKGROUND

On March 2, 2016, Plaintiff, Joseph L. Mizzoni ("Inmate Mizzoni"), filed a Civil Rights Complaint pursuant to 42 U.S.C § 1983 against State of Nevada ex rel Nevada Department of Corrections, C. Smith, Brannon, Lisa Walsh, Baca, McDaniels and Cox. (ECF NO. 5). That same day this Court issued a Screening Order dismissing the State of Nevada ex rel Nevada Department of Corrections with prejudice, dismissing C. Smith, Cox, Walsh, McDaniels and Baca without prejudice and with leave to amend, and allowing the Fourteenth Amendment Due Process claim against Defendant Brannon to proceed. (ECF No. 4 at 9). Inmate Mizzoni was granted thirty (30) days from

the date of the Screening Order to file an amended complaint curing the deficiencies in his complaint. (*Id.* at 10). To cure the deficiencies against C. Smith, Inmate Mizzoni must allege that C. Smith was involved with Inmate Mizzoni's disciplinary proceeding to proceed on a due process claim. (*Id.* at 7).

On March 25, 2016, Inmate Mizzoni filed a First Amended Complaint attempting to cure the deficiencies of his complaint. (ECF No. 7). The amended complaint does not allege that C. Smith was involved with Inmate Mizzoni's disciplinary proceeding. (*Id.*)

II. ARGUMENT

Here, this Court dismissed C. Smith without prejudice after reviewing Inmate Mizzoni's initial complaint. (*Id.* at 9). This Court provided Inmate Mizzoni the opportunity to amend his complaint to include allegations that C. Smith personally participated in the disciplinary proceeding. (*Id.* at 7). Inmate Mizzoni failed to allege that C. Smith personally participated in the disciplinary hearing. Since Inmate Mizzoni failed to cure the deficiencies against C. Smith, C. Smith is still dismissed from this instant action.

III. CONCLUSION

Since C. Smith has been dismissed from this instant action, Defendant respectfully requests this Court deny Inmate Mizzoni's Motion to Respond to Defendant's Notice of Acceptance of Service.

Dated this 26th day of January, 2017.

ADAM PAUL LAXALT
Attorney General

By: 

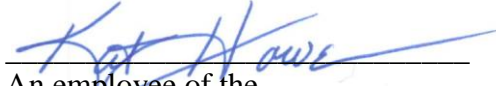
ERIN L. ALBRIGHT
Deputy Attorney General
Bureau of Litigation
Public Safety Division

Attorneys for Defendant

CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on this 26th day of January, 2017, I caused to be deposited for mailing a true and correct copy of the foregoing, **OPPOSITION TO MOTION TO RESPOND TO DEFENDANT'S NOTICE OF ACCEPTANCE OF SERVICE**, to the following:

JOSEPH L. MIZZONI #68549
HIGH DESERT STATE PRISON
P.O. BOX 650
INDIAN SPRINGS, NV 89070


An employee of the
Office of the Attorney General